

## REMARKS

Claims 1-55 are pending in the application. Claims 1, 11, 22, 32, 43, and 53 are independent. Claims 9, 10, 20, 21, 30, 31, 32, 41, 42, 51, and 52 have been amended.

### *Claim Rejections – 35 USC § 101*

The Patent Office rejected claims 32-42 under 35 U.S.C. § 101 as being directed to non-statutory subject matter. Claim 32 has been amended and it is believed that claims 32-42 contain statutory subject matter.

### *Claim Rejections – 35 USC § 112*

The Patent Office rejected claims 32-42 under the first paragraph of 35 U.S.C. § 112 as failing to comply with the enablement requirement. Claim 32 has been amended and it is believed that claims 32-42 comply with the enablement requirement.

The Patent Office rejected claims 9, 10, 20, 21, 30-42, 51, and 52 under the second paragraph of 35 U.S.C. § 112 as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claims 9, 10, 20, 21, 30, 31, 32, 41, 42, 51, and 52 have been amended and it is believed that claims 9, 10, 20, 21, 30-42, 51, and 52 are definite.

### *Claim Rejections – 35 USC § 102*

The Patent Office rejected claims 1, 2, 7-13, 18-23, 28-33, 39-43, 49-53, and 55 under 35 U.S.C. § 102(e) as being anticipated by Bharati et al. (U.S. Patent Application No. 2003/0208593) (“Bharati”).

Applicant respectfully traverses the rejection. Anticipation requires the disclosure in a single prior art reference of each element of the claim under consideration. *W.L. Gore & Assocs. v. Garlock*, 721 F.2d 1540, 220 USPQ 303 (Fed. Cir. 1983), *cert. denied*, 469 U.S. 851 (1984). Further, “anticipation requires the presence in a single prior art reference disclosure of each and every element of the claimed invention, arranged as in the claim.” *Lindemann Maschinenfabrik GmbH v. American Hoist & Derrick Co.*, 730

F.2d 1452, 221 USPQ 481, 485 (Fed. Cir. 1984) (citing *Connell v. Sears, Roebuck & Co.*, 722 F.2d 1542, 220 USPQ 193 (Fed. Cir. 1983). Emphasis added.

Applicant respectfully submits claims 1, 2, 7-13, 18-23, 28-33, 39-43, 49-53, and 55 recite elements that have not been disclosed by Bharati. For example, claims 1, 11, 22, 32, 43, and 53 recite encoding a file marker with build of material information from a source file. Additionally, claims 1, 11, and 32 recite identifying build of material information in a source file. The Patent Office cites to Bharati (page 1 paragraphs [0007] and [0008], page 2 paragraphs [0019] and [0020]) as disclosing the above referenced elements. However, Bharati discloses a method for identifying a failed application. In Bharati, inventories of files and system properties are generated and reported to aid in diagnosing an application failure. Build of material information is a description of a product as built in terms of its components and sub-components. It is not merely an inventory of files and system properties. Further, Bharati does not disclose build of material information from a source file. Bharati does not mention a source file. Bharati does not state how the inventories are generated. Finally, Bharati does not disclose encoding a file marker with the build of material information. Bharati merely discloses that the two inventories are formatted in a desired way, such as in XML format. XML is Extensible Markup Language, a general markup language format. It is not a file of any sort. Bharati makes no mention of file markers.

Claim 11 additionally recites receiving a source file into the computer system. Build of material information is identified in the source file and a file marker is encoded with the build of material information. The Patent Office compares Bharati's installation of applications and upgrading of operating systems on a computer (page 1 paragraphs [0007] and [0008]) to receiving a source file from which build of material information is identified. The installation of an application or an operating system is not equivalent to receiving of a source file from which build of material information may be identified. Build information cannot be identified from the installation files of applications and operating system upgrades. Applications and operating system upgrades do not contain

build of material information, applications and operating systems can become components of the product the build of material information describes.

Claims 22, 43, and 53 recite sending the file marker when an application abnormally terminates. The Patent Office cites to Bharati (page 2 paragraph [0019] as disclosing the above limitation. However, Bharati discloses sending the collected information when an error occurs. Bharati does not mention the abnormal termination of an application, just application errors. Application errors and abnormally terminating applications are not identical.

Consequently, elements of claims 1, 11, 22, 32, 43, and 53 have not been taught, disclosed or suggested by Bharati. Under *Lindemann*, a *prima facie* case of anticipation has not been established for claims 1, 11, 22, 32, 43, and 53, thus claims 1, 11, 22, 32, 43, and 53 are believed allowable. Claims 2, 7-10, 12-13, 18-21, 23, 28-31, 33, 39-42, 49-52, and 55 are believed allowable due to their dependence upon claims 1, 11, 22, 32, 43 and 53, respectively.

#### *Claim Rejections – 35 USC § 103*

The Patent Office rejected claims 3, 4, 14, 15, 24, 25, 35, 36, 45, 46, and 54 under 35 U.S.C. § 103(a) as being unpatentable over Bharati in view of Fitting (U.S. Patent No. 5,857,192) (“Fitting”).

Applicant respectfully traverses. Applicant respectfully submits claims 3, 4, 14, 15, 24, 25, 35, 36, 45, 46, and 54 include novel and nonobvious elements. “To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations.” (emphasis added) (MPEP § 2143). If an independent claim is

nonobvious under 35 U.S.C. 103, then any claim depending therefrom is nonobvious.  
(emphasis added) *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988).

Claims 3 and 4 depend from allowable claim 1 and are believed allowable due to their dependence on an allowable base claim. Claims 14 and 15 depend from allowable claim 11 and are believed allowable due to their dependence on an allowable base claim. Claims 24 and 25 depend from allowable claim 22 and are believed allowable due to their dependence on an allowable base claim. Claims 35 and 36 depend from allowable claim 32 and are believed allowable due to their dependence on an allowable base claim. Claims 45 and 46 depend from allowable claim 43 and are believed allowable due to their dependence on an allowable base claim. Claim 54 depends from allowable claim 53 and is believed allowable due to its dependence on an allowable base claim.

The Patent Office rejected claims 5, 16, 26, 37, and 47 under 35 U.S.C. § 103(a) as being unpatentable over Bharati and Fitting in further view of Richard (U.S. Patent No. 6,920,492) (“Richard”). Applicant respectfully traverses. Claim 5 depends from allowable claim 1 and is believed allowable due to its dependence on an allowable base claim. Claim 16 depends from allowable claim 11 and is believed allowable due to its dependence on an allowable base claim. Claim 26 depends from allowable claim 22 and is believed allowable due to its dependence on an allowable base claim. Claim 37 depends from allowable claim 32 and is believed allowable due to its dependence on an allowable base claim. Claim 47 depends from allowable claim 43 and is believed allowable due to its dependence on an allowable base claim.

The Patent Office rejected claims 6, 17, 27, 38, and 48 under 35 U.S.C. § 103(a) as being unpatentable over Bharati in view of Christofferson et al. (U.S. Patent No. 6,915,302) (“Christofferson”). Applicant respectfully traverses. Claim 34 depends from allowable claim 32 and is believed allowable due to its dependence on an allowable base claim. Claim 6 depends from allowable claim 1 and is believed allowable due to its dependence on an allowable base claim. Claim 17 depends from allowable claim 11 and is believed allowable due to its dependence on an allowable base claim. Claim 27

depends from allowable claim 22 and is believed allowable due to its dependence on an allowable base claim. Claim 38 depends from allowable claim 32 and is believed allowable due to its dependence on an allowable base claim. Claim 48 depends from allowable claim 43 and is believed allowable due to its dependence on an allowable base claim.

The Patent Office rejected claims 34 and 44 under 35 U.S.C. § 103(a) as being unpatentable over Bharati in view of Richard. Applicant respectfully traverses. Claim 34 depends from allowable claim 32 and is believed allowable due to its dependence on an allowable base claim. Claim 44 depends from allowable claim 43 and is believed allowable due to its dependence on an allowable base claim.

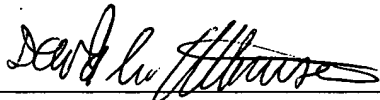
CONCLUSION

In light of the forgoing, reconsideration and allowance of the claims is earnestly solicited.

Respectfully submitted,

Gateway, Inc.,

Dated: December 26, 2006

By:   
David S. Atkinson  
Reg. No. 56,655

David S. Atkinson  
SUITER · SWANTZ PC LLO  
14301 FNB Parkway  
Omaha, NE 68154  
(402) 496-0300      telephone  
(402) 496-0333      facsimile